

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

NORDSTROM, INC., a Washington  
corporation; and NIHC, INC., a Colorado  
corporation,

Plaintiffs,

v.

NOMORERACK RETAIL GROUP, INC., a  
Canadian corporation; and  
NOMORERACK.COM, INC., a Delaware  
corporation,

Defendants.

Case No. \_\_\_\_\_

COMPLAINT FOR TRADEMARK  
INFRINGEMENT; TRADEMARK  
DILUTION; VIOLATION OF SECTION  
43(a) OF THE LANHAM ACT;  
VIOLATION OF  
ANTICYBERSQUATTING  
CONSUMER PROTECTION ACT;  
AND VIOLATION OF THE  
WASHINGTON CONSUMER  
PROTECTION ACT

DEMAND FOR JURY TRIAL

1. This is an action by plaintiffs Nordstrom, Inc. and NIHC, Inc. (collectively, “Nordstrom”), for damages, injunctive relief, and attorneys’ fees for defendants’ willful misappropriation and dilution of and damage to Nordstrom’s registered trademarks RACK<sup>®</sup>, THE RACK<sup>®</sup>, and NORDSTROM RACK<sup>®</sup> (collectively, the “Rack Marks”).

2. Nordstrom is one of America’s leading retailers of fashionable apparel and accessories, known worldwide for its service, selection, quality and value. Forty years ago, Nordstrom launched a new store known as “Nordstrom Rack” (also commonly referred to as “Rack” or “The Rack”), which has become one of the most successful concepts in retailing today. Rack offers apparel and accessories, as well as home accents, bath and beauty products,

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1 and other consumer goods, at deeply discounted prices. Unlike traditional full-price retail  
2 stores, however, Rack offers these discounts every day. The Rack has become a \$2 billion per  
3 year enterprise, and is one of the most successful “off-price” retailers in America today, with  
4 110 stores in 27 states and the District of Columbia. The Rack Marks are the centerpiece of  
5 The Rack’s identity.

6 3. Defendants Nomorerack Retail Group, Inc. and Nomorerack.com, Inc. (collectively,  
7 “NoMoreRack”) have sought improperly to profit from Nordstrom’s substantial investment in the  
8 Rack Marks by using the business name “No More Rack” and by registering and operating the  
9 infringing and dilutive domain names <nomorerack.com> and <friendrack.com>. Defendants use  
10 the <nomorerack.com> domain name as the URL of a website (the “NoMoreRack Site”) that offers  
11 products directly competitive with those offered by Nordstrom under the Rack Marks. The  
12 <friendrack.com> domain name points to a page on the NoMoreRack Site offering rewards to  
13 customers who refer friends to NoMoreRack’s site.

14 4. NoMoreRack seeks simultaneously to trade off of the goodwill the Rack Marks  
15 have come to enjoy among customers, and to reduce the value of that goodwill by improperly  
16 associating Nordstrom and the Rack Marks with goods and services from unrelated sources. As a  
17 result, the Rack Marks’ hard-won reputation for high quality merchandise and outstanding  
18 customer service is being diluted, the value of Nordstrom’s trademarks is being diminished,  
19 and customers are being misled and confused.

20 5. This action seeks damages for the harm defendants have caused to date and  
21 injunctive relief to prevent any further injury to Nordstrom.

## 22 **JURISDICTION AND VENUE**

23 6. This Court has jurisdiction over this action pursuant to: (i) 15 U.S.C. § 1121(a)  
24 and 28 U.S.C. §§ 1331 and 1338(a), as an action for violation of the Lanham Act, 15 U.S.C.  
25 §§ 1051, *et seq.*, the Federal Trademark Dilution Act, 15 U.S.C. §§ 1125(c) and 1127, and the  
26 Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d); (ii) 28 U.S.C. § 1367(a),  
27 pursuant to the principles of supplemental jurisdiction; and (iii) the provisions of 28 U.S.C.  
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1 § 1338(b) as an action asserting a state-law claim for unfair competition joined with a  
2 substantial and related claim under the trademark laws.

3 7. Nordstrom is informed and believes and thereupon alleges that venue of this  
4 action is proper in this district pursuant to 28 U.S.C. § 1391(b), in that a substantial part of the  
5 events giving rise to the claims herein occurred in this judicial district and/or a substantial part  
6 of the property that is the subject of the action is situated in this judicial district.

### 7 **THE PARTIES**

8 8. Plaintiff Nordstrom, Inc. is a corporation organized and existing under the laws  
9 of the State of Washington, with its principal place of business located in Seattle, Washington.  
10 Since at least as early as 1975, Nordstrom, Inc. has continuously operated retail locations under  
11 the trade names "Rack," "The Rack," and "Nordstrom Rack."

12 9. Plaintiff NIHC, Inc. is a corporation organized and existing under the laws of  
13 the State of Colorado, with its principal place of business located in Portland, Oregon. NIHC is  
14 a wholly-owned subsidiary of N2HC, Inc., which is in turn a wholly-owned subsidiary of  
15 Nordstrom, Inc. Ownership of the trademarks described in this Complaint is vested in NIHC.  
16 Nordstrom, Inc. is a licensee of such trademarks.

17 10. Nordstrom is informed and believes and thereupon alleges that defendant  
18 Nomorerack Retail Group, Inc. is a corporation organized and existing under the laws of  
19 Canada, with its principal place of business located in Vancouver, British Columbia, Canada.

20 11. Nordstrom is informed and believes and thereupon alleges that defendant  
21 Nomorerack.com, Inc. is a corporation organized and existing under the laws of the State of  
22 Delaware, with its principal place of business located in New York, New York. Nordstrom is  
23 informed and believes and thereupon alleges that each defendant was the agent, partner, joint  
24 venturer, co-conspirator, alter ego, parent and/or subsidiary of the other defendant and at all  
25 times herein mentioned acted within the course and scope of such relationship and/or had  
26 advance authority and authorization for each act or omission by each other defendant herein;

1 that each defendant aided and abetted the infringing acts of the other defendant; and/or that  
2 each defendant contributed to the infringing acts of the other defendant herein.

3 12. NoMoreRack conducts business over the Internet through the NoMoreRack Site.  
4 Nordstrom is informed and believes and thereupon alleges that defendants, through the  
5 NoMoreRack Site, offer to sell and do sell products to customers throughout the United States,  
6 including in this judicial district. Nordstrom is further informed and believes and thereupon alleges  
7 that defendants transact business within this district, derive revenue from intrastate and interstate  
8 commerce, and have committed tortious acts within this district and also without this district having  
9 consequences within this district.

10 **ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

11 **Nordstrom and its Business**

12 13. Nordstrom is one of the leading fashion specialty retailers in America today.  
13 Founded in 1901 as a single shoe store in Seattle, Nordstrom has grown to operate 231 U.S.  
14 stores located in 31 states, including 110 Rack stores in 27 states and the District of Columbia.  
15 Nordstrom also serves, and sells to, its customers online through its website located at the  
16 URLs <nordstrom.com>, <nordstromrack.com> and, more recently, through its wholly-owned  
17 subsidiary HauteLook.com.

18 14. Nordstrom is renowned for its high level of customer service and its selection of  
19 the finest apparel, shoes, accessories, home accents, and bath and beauty for the entire family.  
20 The company's philosophy has remained unchanged since it was founded 111 years ago: offer  
21 the customer the best possible service, selection, quality and value.

22 **The Rack Stores**

23 15. Nordstrom Rack is a retail concept developed by Nordstrom to cater to shoppers  
24 who prize both quality and value. The Rack appeals to customers seeking designer and other  
25 brand-name goods sold at Nordstrom "full-line" stores (*i.e.*, those operated under the  
26 NORDSTROM® brand) at deeply discounted prices.

1           16. Nordstrom opened its first Rack location in 1973 as an alternative method for  
2 the company's full-line stores to sell slow-moving merchandise. Rather than limiting itself to  
3 traditional clearance sales (in which goods remain on the floor of the full-line stores but are, for  
4 a short period of time, marked down to move quickly), Nordstrom began to transfer its slower-  
5 moving merchandise to a separate location, where its customers could find NORDSTROM®-  
6 quality goods at 30-70% discounts—and could find those bargains every single day.

7           17. In the 1980s, Nordstrom began to open free-standing, separately branded  
8 NORDSTROM RACK® stores. For many years, these Rack stores sold clearance merchandise  
9 from Nordstrom full-line stores, along with some overstock and end-of-season merchandise  
10 from select Nordstrom vendors. By the 1990s, however, The Rack had begun to add “special  
11 purchase” merchandise, *i.e.*, items purchased specifically for The Rack and shipped directly  
12 from the manufacturer to Rack stores. As a result, The Rack now offers a broad selection of  
13 high-quality brand-name apparel, accessories, shoes, bath and beauty products, and home  
14 accents. Today, approximately 15-20% of Rack goods are items originally offered in  
15 Nordstrom full-line stores or on Nordstrom.com, while the remaining 80-85% is special  
16 purchase items. The Rack continues to offer a broad range of NORDSTROM®-quality goods  
17 at discounts from 30-70%. Customers can also purchase Rack merchandise online.

18           18. In the early 2000s, Nordstrom began a major expansion of The Rack. Between  
19 2004 and the present, The Rack's store count increased from 48 to 110, Rack's annual revenues  
20 increased from approximately \$800 million to more than \$2 billion, and Rack's geographic  
21 scope expanded from less than 50 to more than 100 metropolitan areas in 27 states and the  
22 District of Columbia. Throughout this expansion, Rack continued to generate the highest per  
23 square foot revenue of any group of stores in its class.

24           19. Nordstrom has opened 15 new Rack stores in the last 12 months, has announced  
25 plans to open 24 additional Rack locations in 2013, and expects to have a total of over 230  
26 Rack stores in operation by the end of 2016. The Rack's success is due in large part to the  
27 strong and positive reputation it has developed among customers, who recognize that the Rack:  
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1 (1) is an affiliate of Nordstrom and shares the NORDSTROM<sup>®</sup> brand's reputation for  
2 excellence; and (2) offers merchandise that, while sold at discount prices, includes the same  
3 range of high-quality brands offered by full-price retailers. The Rack competes in the "off-  
4 price" segment of the retail market, which includes merchants who offer products at discount  
5 prices.

### 6 **The Rack Marks**

7 20. Since the inception of the Rack concept, Nordstrom has continuously used the Rack  
8 Marks to identify goods and services offered by its Rack stores. The Rack Marks are the subject of  
9 U.S. Trademark Registrations Nos. 3,866,811 for RACK<sup>®</sup>; 3,962,979 for THE RACK<sup>®</sup>; and  
10 1,409,938, 2,980,055 and 3,893,991 for NORDSTROM RACK<sup>®</sup>. True and correct copies of pages  
11 printed from the United States Patent and Trademark Office website (uspto.gov) reflecting those  
12 registrations are attached hereto as Exhibits A-E. Nordstrom has spent substantial time, effort and  
13 money advertising and promoting the Rack Marks throughout the United States. As a result, the  
14 Rack Marks have become famous and highly distinctive trademarks.

### 15 **Defendants' Misappropriation and Misuse of the Rack Marks**

16 21. NoMoreRack has sought to capitalize on the reputation of the Rack Marks by, in  
17 effect, stealing Nordstrom's significant investment in them.

18 22. On a date unknown to Nordstrom but believed to have been in late 2010,  
19 NoMoreRack began to operate the NoMoreRack Site, on which customers throughout the U.S.,  
20 including those who reside in this judicial district, can shop for and purchase discounted brand-  
21 name products. The NoMoreRack Site is a new type of off-price retail concept, known as a  
22 "flash sale" website. Flash sale sites generally offer a particular set of goods at deep discounts,  
23 but only for short periods of time. Many flash sale sites have become successful in a very short  
24 time, and many brick & mortar retailers have begun to use the increasingly popular flash sale  
25 model to further increase visibility and sales of off-price merchandise.

26 23. In or about January 2011, NoMoreRack expanded its use of "Rack" to identify  
27 its goods and services. Specifically, NoMoreRack launched "FriendRack," a referral program  
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1 through which NoMoreRack awards free merchandise to customers who refer other customers  
2 to the NoMoreRack Site. The <friendrack.com> domain name points to a page on the  
3 NoMoreRack Site that explains the terms and conditions of defendants' FriendRack referral  
4 rewards program.

5 24. Nordstrom is informed and believes and thereupon alleges that NoMoreRack  
6 chose the <nomorerack.com> and <friendrack.com> domains, and corresponding business and  
7 brand names, with the intent and purpose of trading off the goodwill that the Rack Marks enjoy  
8 and/or misleading and confusing consumers. Nordstrom is informed and believes and on that  
9 basis alleges that defendants knew when they began to operate the NoMoreRack Site that  
10 Nordstrom had invested over four decades of time, effort and money into developing in the  
11 Rack Marks a reputation for excellent customer service and quality discount merchandise.  
12 NoMoreRack's business did not have a brand identity that could possibly attract such high  
13 levels of customer goodwill and name association. Thus, rather than develop goodwill in  
14 independently created trademarks, NoMoreRack simply misappropriated The Rack's hard-won  
15 reputation.

16 25. Defendants' NoMoreRack Site and FriendRack referral rewards program create  
17 a likelihood that customers will be misled and confused as to the source of the goods and  
18 services offered by NoMoreRack and/or the sponsorship or endorsement of the NoMoreRack  
19 Site by, or the affiliation of the NoMoreRack Site with, Nordstrom. The likelihood of such  
20 confusion is increased by NoMoreRack's choice of two domain names incorporating the  
21 "Rack<sup>®</sup>" mark in its entirety, and the sale on the NoMoreRack Site of goods that are directly  
22 competitive with those offered under the genuine Rack Marks.

23 26. As a result of the foregoing, Nordstrom's reputation is being injured, customers  
24 are less able to identify and distinguish the goods and services offered under the Rack Marks, and  
25 the value and distinctiveness of the Rack Marks are being diminished. Nordstrom is informed  
26 and believes and thereupon alleges that, absent the intervention of this Court, NoMoreRack's  
27 illegal actions will continue, and Nordstrom and customers will continue to be harmed.

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27. Nordstrom is informed and believes and thereupon alleges that NoMoreRack is receiving financial gain by reason of the infringing use of the <nomorerack.com> and <friendrack.com> domain names and operation of the NoMoreRack Site. Moreover, absent an injunction, NoMoreRack could expand its infringing activities by using the “NoMoreRack” and “FriendRack” names in other ways, such as linking to third-party websites, allowing advertising on the NoMoreRack Site in exchange for commissions, “selling” the names, pointing Internet users who seek to reach the NoMoreRack Site to third-party websites in exchange for “click-through” revenues from such sites, and/or opening brick & mortar store locations in the U.S. under the “Nomorerack” name.

**Nordstrom’s Attempts Informally to Resolve This Matter**

28. Nordstrom did not learn of the NoMoreRack Site until early 2012. (At that time, NoMoreRack was a small, Canadian start-up company with no physical presence in the United States and little visibility in the off-price marketplace.) Nordstrom promptly put NoMoreRack on notice that the “NoMoreRack” name infringes the Rack Marks and demanded that NoMoreRack cease use of all variations of the Rack Marks in a manner that might confuse customers. Despite subsequent negotiations between the parties, NoMoreRack has to date refused to comply with Nordstrom’s demands. Nordstrom has been left with no choice but to institute the instant action seeking judicial protection of its rights.

**First Claim for Relief**

**(Trademark Infringement, 15 U.S.C. § 1114(1))**

29. Nordstrom specifically realleges and incorporates herein by reference each and every allegation set forth above.

30. Nordstrom owns the exclusive trademark rights and privileges in and to the Rack Marks. The United States Patent and Trademark Office has granted federal trademark registrations to the Rack Marks. Copies of pages printed from the United States Patent and Trademark Office website (uspto.gov) reflecting these registrations are attached hereto as Exhibits A-E.



1           31. NoMoreRack is using copies or colorable imitations of the Rack Marks in a  
2 manner that is likely to confuse, deceive and/or cause mistake among customers and therefore  
3 infringes Nordstrom's rights in the Rack Marks in violation of 15 U.S.C. § 1114(1).

4           32. Nordstrom has no adequate remedy at law for NoMoreRack's infringement of  
5 the Rack Marks, in that: (i) the Rack Marks are unique and valuable property, injury to which  
6 cannot adequately be compensated by monetary damages; (ii) the damages to Nordstrom  
7 resulting from the infringement are not precisely and fully ascertainable; (iii) the infringement  
8 injures and threatens to continue to injure Nordstrom's reputation and goodwill; and (iv) the  
9 damage resulting to Nordstrom from defendants' wrongful conduct, and the conduct itself, are  
10 continuing, and Nordstrom would be required to bring a multiplicity of suits to achieve full  
11 redress for the injuries caused thereby.

12           33. Unless restrained, NoMoreRack's infringement of the Rack Marks will continue  
13 to cause irreparable injury to Nordstrom, both during the pendency of this action and thereafter.  
14 If Nordstrom cannot control the goodwill of its trademarks or their dilution, the 40 years of  
15 promotion of the Rack brand and the substantial financial investment it has made in developing  
16 consumer recognition of those marks will have been for nothing. Nordstrom is therefore  
17 entitled to an order from this Court preliminarily and permanently enjoining defendants and  
18 their agents, employees and others acting in concert with them, from directly or indirectly  
19 infringing the Rack Marks in any manner, including by using any mark, design or logo that is  
20 confusingly similar to the Rack Marks in connection with the sale, offer for sale, advertising, or  
21 promotion of any goods or services.

22           34. Nordstrom is further entitled to recover damages sustained in consequence of  
23 defendants' wrongful conduct, in an amount to be determined; to recover defendants' profits; and to  
24 recover Nordstrom's attorneys' fees and other costs herein. Based upon the circumstances of the  
25 case, including the willful nature of defendants' conduct, Nordstrom is further entitled to recover  
26 treble the amount found as actual damages pursuant to 15 U.S.C. § 1117.

**Second Claim for Relief**

**(Trademark Infringement Under Washington State Common Law)**

35. Nordstrom specifically realleges and incorporates herein by reference each and every allegation set forth above.

36. The acts and conduct of NoMoreRack, as alleged above, constitute infringement of Nordstrom's Washington State common law rights in the Rack Marks. Nordstrom has registered the Rack Marks and its use is prior to that of defendants' efforts at misappropriation.

37. Defendants' acts and conduct as alleged above have damaged and will continue to damage Nordstrom in an amount that is unknown at the present time.

**Third Claim for Relief**

**(Trademark Dilution, 15 U.S.C. §§ 1125(c) and 1127)**

38. Nordstrom specifically realleges and incorporates herein by reference each and every allegation set forth above.

39. Nordstrom has used and continues to use the Rack Marks in interstate commerce. The Rack Marks have become and continue to be "famous" within the meaning of 15 U.S.C. § 1125(c).

40. Defendants have made and continue to make commercial use in commerce of a variation of the Rack Marks in a manner that is likely to cause dilution of the distinctive quality of the Rack Marks and lessen the capacity of the Rack Marks to identify and distinguish Nordstrom's goods and services. Defendants' use of the infringing and dilutive NoMoreRack and FriendRack names began after Nordstrom's Rack Marks had become famous.

41. Nordstrom is entitled to an order from this Court preliminarily and permanently enjoining defendants, their agents, employees and others acting in concert with them, from directly or indirectly making any further commercial use of the "NoMoreRack" and "FriendRack" names, the <nomorerack.com> and <friendrack.com> domain names, or any other names, marks or logos that are similar to the Rack Marks.

42. Because defendants have willfully intended to cause dilution of the Rack Marks, Nordstrom is further entitled, pursuant to 15 U.S.C. §§ 1117 and 1125(c)(5), to recover all damages sustained as a result of defendants' unlawful conduct, including: (i) defendants' profits; (ii) Nordstrom's damages; (iii) Nordstrom's costs of suit; (iv) Nordstrom's reasonable attorneys' fees; and (v) treble the amount found as actual damages.

**Fourth Claim for Relief**

**(Trademark Dilution, RCW § 19.77.160)**

43. Nordstrom specifically realleges and incorporates herein by reference each and every allegation set forth above.

44. The acts and conduct of defendants as alleged above constitute the unauthorized, commercial use of famous trademarks of Nordstrom, commencing after those marks had become famous.

45. The acts and conduct of defendants as alleged above cause dilution of the distinctive quality of the Rack Marks, and lessen the capacity of such marks to identify and distinguish Nordstrom's goods and services in violation of RCW Sections 19.77.160 and 19.77.010.

46. Defendants' acts and conduct as alleged above have damaged and will continue to damage Nordstrom in an amount that is unknown at the present time.

47. Nordstrom is entitled to an order from this Court preliminarily and permanently enjoining defendants, their agents, employees and others acting in concert with them, from directly or indirectly making any further commercial use of the "NoMoreRack" and "FriendRack" names, the <nomorerack.com> and <friendrack.com> domain names, or any other names, marks or logos that are similar to the Rack Marks.

48. Because defendants have willfully intended to cause dilution of the Rack Marks, Nordstrom is entitled, pursuant to RCW §§ 19.77.160 and 19.77.150, to recover all damages sustained as a result of defendants' unlawful conduct, including: (i) defendants' profits;

1 (ii) Nordstrom's actual damages; (iii) Nordstrom's costs of suit; (iv) Nordstrom's reasonable  
2 attorneys' fees; and (v) treble the amount found as actual damages.

3 **Fifth Claim for Relief**

4 **(Violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a))**

5 49. Nordstrom specifically realleges and incorporates herein by reference each and  
6 every allegation set forth above.

7 50. The acts of defendants alleged herein are likely to cause confusion, or to cause  
8 mistake, or to deceive as to the affiliation, connection, or association of defendants with  
9 Nordstrom, or as to the sponsorship, or approval of defendants' goods, services or commercial  
10 activities by Nordstrom. Defendants' actions further misrepresent the nature, characteristics or  
11 qualities of defendants' goods, services or commercial activities.

12 51. Nordstrom has no adequate remedy at law for the foregoing wrongful conduct of  
13 defendants, in that: (i) defendants' actions damage and threaten to continue to damage  
14 Nordstrom's unique and valuable property, injury to which cannot adequately be compensated  
15 by monetary damages; (ii) the damages to Nordstrom from defendants' wrongful actions are  
16 not precisely and fully ascertainable; (iii) the wrongful acts of defendants injure and threaten to  
17 continue to injure Nordstrom's reputation and goodwill; and (iv) the damage resulting to  
18 Nordstrom from defendants' wrongful conduct, and the conduct itself, are continuing, and  
19 Nordstrom would be required to bring a multiplicity of suits to achieve full compensation for  
20 the injuries caused thereby.

21 52. Unless restrained, the foregoing wrongful acts of defendants will continue to  
22 cause irreparable injury to Nordstrom, both during the pendency of this action and thereafter.  
23 Nordstrom is therefore entitled to an order from this Court preliminarily and permanently  
24 enjoining defendants and their agents, employees and others acting in concert with them, from  
25 directly or indirectly: (i) manufacturing, producing, distributing, circulating, selling, offering  
26 for sale, advertising, promoting or displaying any product or service which tends to relate or  
27 connect such product or service in any way to Nordstrom or to any goods or services offered,

provided, sold, manufactured, sponsored or approved by, or connected with Nordstrom; or  
(ii) making any false description or representation of origin concerning any goods or services  
offered for sale by defendants, or either of them.

53. Nordstrom is further entitled to recover damages sustained in consequence of  
defendants' wrongful conduct, in an amount to be determined, and to recover its attorneys' fees  
and costs herein.

**Sixth Claim for Relief**

**(Violation of the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d))**

54. Nordstrom specifically realleges and incorporates herein by reference each and  
every allegation set forth above.

55. By virtue of Nordstrom's prominent, long and continuous use of the Rack Marks  
in interstate commerce, the Rack Marks have become and continue to be "famous" within the  
meaning of 15 U.S.C. § 1125(c).

56. Defendants' domain names <nomorerack.com> and <friendrack.com> are  
confusingly similar to and/or dilutive of Nordstrom's Rack Marks. Nordstrom is informed and  
believes and thereupon alleges that defendants registered and used the domain names  
<nomorerack.com> and <friendrack.com> with a bad faith intent to profit from the Rack  
Marks.

57. Defendants' choice of <nomorerack.com> and <friendrack.com> as domain  
names was not based in any way on defendants' legal name or any name that otherwise was  
commonly used to identify defendants. Prior to receiving notice of their infringing acts,  
defendants never used the <nomorerack.com> and <friendrack.com> domain names in  
connection with a *bona fide* offering of any goods or services.

58. Nordstrom has no adequate remedy at law for the foregoing wrongful conduct of  
defendants, in that: (i) defendants' actions damage and threaten to continue to damage  
Nordstrom's unique and valuable property, injury to which cannot adequately be compensated  
by monetary damages; (ii) the damages to Nordstrom from defendants' wrongful actions are  
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1 not precisely and fully ascertainable; (iii) the wrongful acts of defendants injure and threaten to  
2 continue to injure Nordstrom's reputation and goodwill; and (iv) the damages resulting to  
3 Nordstrom from defendants' wrongful conduct, and the conduct itself, are continuing, and  
4 Nordstrom would be required to bring a multiplicity of suits to achieve full compensation for  
5 the injuries caused thereby.

6 59. Unless restrained, the foregoing wrongful acts of defendants will continue to  
7 cause irreparable injury to Nordstrom, both during the pendency of this action and thereafter.  
8 Therefore, this Court should enter orders: (a) preliminarily and permanently enjoining  
9 defendants and their agents, employees and others acting in concert with them from directly or  
10 indirectly using or trafficking in the <nomorerack.com> and <friendrack.com> domain names  
11 and/or registering, using or trafficking in Internet domain names that are dilutive of or  
12 confusingly similar to any of the Rack Marks; and (b) requiring defendants to forfeit and to  
13 transfer to Nordstrom the <nomorerack.com> and <friendrack.com> domain names and any  
14 and all other domain names that the Court determines to be confusingly similar to or to dilute  
15 any of the Rack Marks.

16 60. Nordstrom is further entitled to recover damages sustained in consequence of  
17 defendants' wrongful conduct, in an amount to be determined; to recover defendants' profits;  
18 and to recover its attorneys' fees and other costs herein. Based upon the circumstances of the  
19 case, including the willful, deliberate and intentional nature of defendants' conduct, including  
20 the extent of the unlawful conduct, Nordstrom is further entitled, pursuant to 15 U.S.C.  
21 § 1117(d), to recover statutory damages of \$100,000 per domain name.

#### 22 **Seventh Claim for Relief**

#### 23 **(Violation of the Washington Consumer Protection Act, RCW § 19.86.020, *et seq.*)**

24 61. Nordstrom specifically realleges and incorporates herein by reference each and  
25 every allegation set forth above.

26 62. Defendants' activities, as alleged above, constitute unfair methods of  
27 competition, and unfair or deceptive acts or practices in the conduct of trade or commerce, in  
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1 violation of RCW §§ 19.86.020, *et seq.* Among other things, defendants have engaged in  
2 (1) acts that are deceptive *per se* in that they violate multiple statutes aimed at protecting the  
3 public against confusion; and (2) they have engaged in activities that have the capacity to  
4 materially mislead a large portion of the public because NoMoreRack operates over the Internet  
5 and promotes itself widely.

6 63. Defendants' conduct affects and is contrary to the public interest and tends to  
7 mislead a substantial portion of the public as to the source, origin or approval of the infringing  
8 "NoMoreRack" and "FriendRack" products and services, causing Nordstrom injury in its  
9 business and property in the State of Washington.

10 64. As a result of defendants' deceptive acts and practices, and the resulting  
11 customer confusion, Nordstrom has suffered and will continue to suffer losses and irreparable  
12 injury to its business reputation and goodwill in amounts not yet ascertained. Nordstrom's  
13 remedy at law is not itself adequate to compensate it for injuries inflicted and threatened by  
14 defendants.

15 65. Nordstrom is entitled to an order from this Court preliminarily and permanently  
16 enjoining defendants, their agents, employees and others acting in concert with them, from  
17 directly or indirectly making any further commercial use of the "NoMoreRack" and  
18 "FriendRack" names, the <nomorerack.com> and <friendrack.com> domain names, or any  
19 other names, marks or logos that are similar to the Rack Marks.

20 66. Pursuant to RCW § 19.86.090, Nordstrom is further entitled to actual and  
21 trebled damages, attorneys' fees, and costs of suit.

#### 22 **PRAYER AND JURY DEMAND**

23 Pursuant to Fed. R. Civ. Proc. 38(b), plaintiffs Nordstrom, Inc. and NIHC, Inc. hereby  
24 demand trial by jury of all issues so triable that are raised herein or which hereinafter may be  
25 raised in this action.

26 WHEREFORE, plaintiffs pray for judgment as follows:

1           1.       On each and every Claim for Relief alleged herein, for damages according to  
2 proof;

3           2.       On each and every Claim for Relief alleged herein, for preliminary and  
4 permanent injunctive relief as hereinabove described;

5           3.       On the First, Third, Fifth and Sixth Claims for Relief alleged herein, for  
6 attorneys' fees and enhanced or statutory damages as provided by law;

7           4.       On the First, Third, Fourth, Sixth and Seventh Claims for Relief alleged herein, for  
8 attorneys' fees, disgorgement of defendants' profits and enhanced damages as provided by law;

9           5.       For plaintiffs' costs of suit herein, including its reasonable attorneys' fees; and

10          6.       For such other, further or different relief as this Court may deem just and proper.

11 Dated: October 19, 2012.

BAKER WILLIAMS MATTHIESEN LLP

12 By /s/ John C. Rawls

13 John C. Rawls, WSBA No. 44522  
14 1177 West Loop South, Suite 1600  
Houston, Texas 77027  
15 T: 713-888-3535  
F: 713-888-3550  
16 rocky@bwmtx.com

17 By /s/ Valyncia Simmons

18 Valyncia Simmons, WSBA No. 44017  
19 1725 I Street NW, Suite 300  
Washington, DC 20006  
20 T: 202-349-1136  
F: 202-349-3915  
21 valyncia@bwmtx.com



1 LANE POWELL PC

2  
3 By /s/ James B. Stoetzer  
4 James B. Stoetzer, WSBA No. 06298

5 By /s/ Tiffany Scott Connors  
6 Tiffany Scott Connors, WSBA No. 41740  
7 1420 Fifth Avenue, Suite 4200  
8 Seattle, Washington 98101  
9 T: 206-223-7000  
10 F: 206-223-7107  
11 [stoetzerj@lanepowell.com](mailto:stoetzerj@lanepowell.com)  
12 [connorst@lanepowell.com](mailto:connorst@lanepowell.com)

13 ATTORNEYS FOR PLAINTIFFS  
14 NORDSTROM, INC. AND NIHC, INC.

**JURY DEMAND**

Pursuant to Fed. R. Civ. P. 38(b), plaintiffs hereby demand trial by jury of all issues so triable that are raised herein or which hereinafter may be raised in this action.

Dated: October 19, 2012.

BAKER WILLIAMS MATTHIESEN LLP

By /s/ John C. Rawls

John C. Rawls, WSBA No. 44522  
1177 West Loop South, Suite 1600  
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LANE POWELL PC

By /s/ James B. Stoetzer

James B. Stoetzer, WSBA No. 06298

By /s/ Tiffany Scott Connors

Tiffany Scott Connors, WSBA No. 41740  
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[stoetzerj@lanepowell.com](mailto:stoetzerj@lanepowell.com)  
[connorst@lanepowell.com](mailto:connorst@lanepowell.com)

ATTORNEYS FOR PLAINTIFFS  
NORDSTROM, INC. AND NIHC, INC.

# EXHIBIT

## A

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# RACK

|                                    |  |
|------------------------------------|--|
| <b>Word Mark</b>                   | RACK   |
| <b>Goods and Services</b>          | IC 035. US 100 101 102. G & S: retail store services and mail order catalog services featuring apparel, footwear, fashion accessories and gifts. FIRST USE: 19900000. FIRST USE IN COMMERCE: 19900000                          |
| <b>Standard Characters Claimed</b> |  |
| <b>Mark Drawing Code</b>           | (4) STANDARD CHARACTER MARK  |
| <b>Serial Number</b>               | 77942725   |
| <b>Filing Date</b>                 | February 23, 2010  |
| <b>Current Basis</b>               | 1A   |
| <b>Original Filing Basis</b>       | 1A   |
| <b>Published for Opposition</b>    | August 10, 2010  |
| <b>Change In Registration</b>      | CHANGE IN REGISTRATION HAS OCCURRED  |
| <b>Registration Number</b>         | 3866811  |
| <b>Registration Date</b>           | October 26, 2010   |
| <b>Owner</b>                       | (REGISTRANT) Nordstrom, Inc. CORPORATION WASHINGTON Suite 500 1617 Sixth Avenue Seattle WASHINGTON 98101<br><br>(LAST LISTED OWNER) NIHC, INC. CORPORATION COLORADO 701 SOUTHWEST BROADWAY 4TH FLOOR PORTLAND OREGON 972053398 |
| <b>Assignment Recorded</b>         | ASSIGNMENT RECORDED  |

**Attorney of Record** William O. Ferron, Jr.  
**Prior Registrations** 1409938;2980055  
**Type of Mark** SERVICE MARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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# THE RACK

|                                    |   |
|------------------------------------|---|
| <b>Word Mark</b>                   | THE RACK  |
| <b>Goods and Services</b>          | IC 035. US 100 101 102. G & S: retail store services, online retail store services and mail order catalog services featuring apparel, footwear, fashion accessories and gifts. FIRST USE: 19900000. FIRST USE IN COMMERCE: 19900000 |
| <b>Standard Characters Claimed</b> |   |
| <b>Mark Drawing Code</b>           | (4) STANDARD CHARACTER MARK   |
| <b>Serial Number</b>               | 77942736  |
| <b>Filing Date</b>                 | February 23, 2010   |
| <b>Current Basis</b>               | 1A  |
| <b>Original Filing Basis</b>       | 1B  |
| <b>Published for Opposition</b>    | August 10, 2010   |
| <b>Registration Number</b>         | 3962979   |
| <b>Registration Date</b>           | May 17, 2011  |
| <b>Owner</b>                       | (REGISTRANT) Nordstrom, Inc. CORPORATION WASHINGTON 1617 Sixth Avenue Suite 500 Seattle WASHINGTON 98101  |
| <b>Assignment Recorded</b>         | ASSIGNMENT RECORDED   |
| <b>Attorney of Record</b>          | William O. Ferron, Jr.  |
| <b>Prior Registrations</b>         | 1409938;2980055   |
| <b>Type of Mark</b>                | SERVICE MARK  |

Register PRINCIPAL  
Live/Dead  
Indicator LIVE

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**Typed Drawing**

|                                 |  |
|---------------------------------|--|
| <b>Word Mark</b>                | NORDSTROM RACK   |
| <b>Goods and Services</b>       | IC 042. US 101. G & S: RETAIL MEN'S AND WOMEN'S CLOTHING STORE SERVICES.<br>FIRST USE: 19721000. FIRST USE IN COMMERCE: 19721000   |
| <b>Mark Drawing Code</b>        | (1) TYPED DRAWING  |
| <b>Serial Number</b>            | 73580518   |
| <b>Filing Date</b>              | January 31, 1986   |
| <b>Current Basis</b>            | 1A   |
| <b>Original Filing Basis</b>    | 1A   |
| <b>Published for Opposition</b> | June 24, 1986  |
| <b>Registration Number</b>      | <b>1409938</b>   |
| <b>Registration Date</b>        | September 16, 1986   |
| <b>Owner</b>                    | (REGISTRANT) NORDSTROM, INC. CORPORATION WASHINGTON 1321 SECOND AVENUE SEATTLE WASHINGTON 98111<br><br>(LAST LISTED OWNER) NIHC, INC. CORPORATION COLORADO 701 S.W. BROADWAY PORTLAND OREGON 97205 |
| <b>Assignment Recorded</b>      | ASSIGNMENT RECORDED  |
| <b>Attorney of Record</b>       | WILLIAM O. FERRON, JR.   |
| <b>Prior Registrations</b>      | 1280785;1280997;1281000  |
| <b>Type of Mark</b>             | SERVICE MARK   |
| <b>Register</b>                 | PRINCIPAL  |
| <b>Affidavit Text</b>           | SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20061122.   |
| <b>Renewal</b>                  | 1ST RENEWAL 20061122   |

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# NORDSTROM RACK

|                                 |  |
|---------------------------------|--|
| <b>Word Mark</b>                | NORDSTROM RACK NR  |
| <b>Goods and Services</b>       | IC 035. US 100 101 102. G & S: Retail store [ and online retail ] services, all in the field of apparel, footwear, small leather goods, eyewear, jewelry, and bath, body and personal care products; retail [ and online retail ] gift shop services. FIRST USE: 20010400. FIRST USE IN COMMERCE: 20010400 |
| <b>Mark Drawing Code</b>        | (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS   |
| <b>Design Search Code</b>       | 26.01.21 - Circles that are totally or partially shaded.   |
| <b>Serial Number</b>            | 78976100   |
| <b>Filing Date</b>              | October 16, 2002   |
| <b>Current Basis</b>            | 1A   |
| <b>Original Filing Basis</b>    | 1B   |
| <b>Published for Opposition</b> | July 29, 2003  |
| <b>Registration Number</b>      | 2980055  |
| <b>Registration Date</b>        | July 26, 2005  |
| <b>Owner</b>                    | (REGISTRANT) Nordstrom, Inc. CORPORATION WASHINGTON 1700 Seventh Avenue 8th Floor Seattle WASHINGTON 98101<br><br>(LAST LISTED OWNER) NIHC, INC. CORPORATION COLORADO 701 SOUTHWEST BROADWAY 4TH FLOOR PORTLAND OREGON 972053398   |
| <b>Assignment Recorded</b>      | ASSIGNMENT RECORDED  |

Attorney of Record William O. Ferron, Jr.  
Type of Mark SERVICE MARK  
Register PRINCIPAL  
Affidavit Text SECT 15. SECT 8 (6-YR).  
Live/Dead Indicator LIVE

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|                           |                          |                            |                           |                             |                           |                     |                      |                           |                           |                           |
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**rack**

|  |   |
|--|---|
| <b>Word Mark</b>                                     | NORDSTROM RACK  |
| <b>Goods and Services</b>                            | IC 035. US 100 101 102. G & S: Retail store services featuring apparel, footwear, fashion accessories and gifts. FIRST USE: 20080925. FIRST USE IN COMMERCE: 20080925 |
| <b>Mark Drawing Code</b>                             | (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM   |
| <b>Trademark Search Facility Classification Code</b> | SHAPES-MISC Miscellaneous shaped designs  |
| <b>Serial Number</b>                                 | 85049432  |
| <b>Filing Date</b>                                   | May 27, 2010  |
| <b>Current Basis</b>                                 | 1A  |
| <b>Original Filing Basis</b>                         | 1A  |
| <b>Published for Opposition</b>                      | October 5, 2010   |
| <b>Registration Number</b>                           | 3893991   |
| <b>Registration Date</b>                             | December 21, 2010   |
| <b>Owner</b>   | (REGISTRANT) Nordstrom, Inc. CORPORATION WASHINGTON Suite 500 1617 Sixth Avenue Seattle WASHINGTON 98101  |



(LAST LISTED OWNER) NIHC, INC. CORPORATION COLORADO 701 SOUTHWEST  
BROADWAY 4TH FLOOR PORTLAND OREGON 972053398

**Assignment Recorded** ASSIGNMENT RECORDED

**Attorney of Record** William O. Ferron, Jr.

**Prior Registrations** 1409938;2980055;3029052;AND OTHERS

**Description of Mark** Color is not claimed as a feature of the mark. The mark consists of the word "NORDSTROM" above the word "RACK".

**Type of Mark** SERVICE MARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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|                           |                          |                            |                           |                             |                           |                     |                      |                         |                           |
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